



Putting a Time on 'Timely' Notice:

House Members Try to Tighten Strings on 'Covert' Operations

Angered by President Reagan's secret arms sales to Iran, some members of Congress are fashioning legislation to make sure they are informed about future "covert" operations.

The legislation (HR 1013) would stiffen requirements for notifying Congress about such activities. It is strongly endorsed by House Speaker Jim Wright, D-Texas, who says that Reagan could have avoided the "colossal misjudgments" of his Iran operation had he notified members of Congress before trading arms for the release of Americans held hostage in Lebanon.

Reagan administration aides are studying the bill and have yet to announce an official position. But "it's obvious that they're going to come out against it," said an administration official who asked that he not be identified.

In opposing the bill, the White House is likely to lean heavily on a conclusion reached by an investigating commission headed by former Sen. John Tower, R-Texas. "The process is fine. It's just that the people were wrong," said the official.

The Tower board was named by Reagan to look into the Iran arms sales and charges that profits had been diverted to the anti-government contra guerrillas in Nicaragua. (*Background, Weekly Report* pp. 561, 339)

In the wake of the Tower board's Feb. 26 report, Reagan tried to assure Congress that he will do a better job of sharing information about covert activities. In a televised speech March 4, the president said he was "determined to make the congressional oversight process work."

"Proper procedures for consultation with the Congress will be followed, not only in letter but in spirit," Reagan said.

Jumping the Gun?

Investigating committees established by the House and Senate will

begin public hearings into the Iran-contra affair May 5. One of their tasks is to recommend legislative changes to prevent similar mishaps in the future.

But the House Intelligence Committee appears ready to jump the gun; members of the panel are preparing their covert-notification bill before the select committees begin hearings.

Edward P. Boland, D-Mass., said quick action is needed because of a "serious and fundamental disagreement" between Congress and the administration over the requirements of existing law on secret operations.

Boland, a former chairman of the House Intelligence Committee and a member of the special Iran panel, is one of the chief sponsors of HR 1013. Long an opponent of the administration's efforts to aid the contras, Boland authored amendments aimed at preventing the CIA from supporting the war against the leftist Sandinista regime. (*1985 Almanac* p. 76)

Despite Reagan's pledge of increased cooperation with Congress, the House is likely to pass some kind of covert-notification bill this year.

Wright's personal endorsement of HR 1013 ought to enhance its prospects.

Action in the Senate is doubtful, however, because of reservations by some key senators about the need for legislation. As a result, it seems unlikely that Congress will enact a bill forcing Reagan and future presidents to notify lawmakers about secret operations.

Still, the debate shaping up over the pending House measure illustrates a deep sense of frustration that some members of Congress have when it comes to being kept informed about secret actions undertaken by the CIA and other executive branch agencies.

The arguments over the legislation also point to the difficulties that Congress has had over the years in crafting laws to enable it to look over an administration's shoulder when covert actions are carried out.

Part of the problem stems from the conflict between a president wishing to conduct secret foreign policy initiatives — such as Reagan's support for the Nicaraguan contras and the mujahedeen rebels in Afghanistan — and members of Congress who oppose the use of covert methods to avert public discussion of controversial policies.

The potential of damaging leaks of sensitive information is often raised by those who do not want to force the administration to notify Capitol Hill about covert actions. But others claim

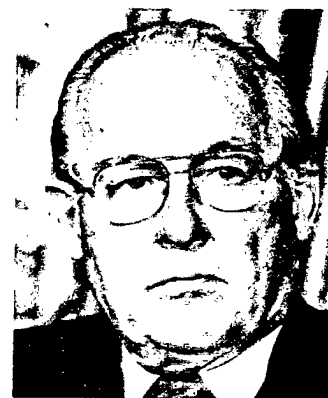


Secret aid to the Nicaraguan contras, above, touched a nerve in Congress two years ago. Today, members are unhappy they were kept in the dark about the Iran arms deal.

—By Steven Pressman



Rep. Edward P. Boland, D-Mass., left, wants quick action on a covert-notification bill to settle a "serious and fundamental disagreement" over existing law. But House Minority Leader Robert H. Michel, R-Ill., calls the measure the "functional equivalent of a foreign policy straitjacket."



that members of Congress can be trusted with secrets, adding that many leaks come from executive branch officials.

Current Covert Law

The House and Senate Intelligence committees are now kept apprised of ongoing covert operations through periodic briefings by the administration; they are also briefed in conjunction with their jurisdiction over the CIA's budget, which includes a contingency fund for covert actions.

In addition to the annual budget review, the president under current law is required to give prior notice of new covert actions to members of the two Intelligence committees.

But he also may wait until after a covert action has been launched to tell members of Congress. In those cases, the president must inform lawmakers in a "timely fashion," a phrase that was not defined when the law was enacted in 1980 as part of an intelligence authorization bill, PL 96-450. (1980 *Almanac* p. 66)

Congress' action in 1980 changed an earlier law — the Hughes-Ryan amendment of 1974 — that required notification of covert activities to eight congressional committees.

Reagan's decision to sell weapons to Iran has revived the debate over what Congress meant by "timely" notification. He did not tell legislators about his secret "finding" in January 1986 to authorize the sales until the operation was revealed in press accounts nearly 10 months later.

The text of the finding was released last January, nearly a year after Reagan signed it. When he first approved it, Reagan ordered then-CIA Director William J. Casey not to tell Congress about the operation "due to its extreme sensitivity and security

risks." Reagan further instructed Casey to conceal the operation from Congress "until I otherwise direct."

Attorney General Edwin Meese III advised Reagan at the time that withholding the finding from Congress was legal. Meese told the Senate Intelligence Committee, which held hearings on the Iran-contra affair last December, that it was his understanding that Congress would be notified when the hostages were released.

A legal memorandum prepared by the Justice Department in December concluded that Reagan was "within his authority in maintaining the secrecy of this sensitive diplomatic initiative from Congress until such time as he believed that disclosure to Congress would not interfere with the success of the operation."

The memo also said that the president had enough discretion under the 1980 notification requirement to choose a "reasonable moment" to inform Congress about a covert action.

Demanding Notification

Angered by what they felt was an end-run around the 1980 law, all 11 Democratic members of the House Intelligence Committee in February introduced HR 1013.

The bill, also sponsored by nearly 50 other House members, would keep in place existing law that prior notice be given to the two Intelligence panels. It also would continue to allow the president to tell a smaller group of congressional leaders instead if circumstances made it difficult to inform the two panels.

The more limited group — sometimes described as the "gang of eight" — is made up of the House Speaker and minority leader; the Senate majority and minority leaders; and the chairmen and ranking minority mem-

bers of the two Intelligence panels.

But the pending measure specifically defines "timely" notice: It would allow the president to wait no longer than 48 hours after a covert operation has been launched before informing members of Congress.

In addition, the bill would require the president to give copies of a written finding authorizing covert operations to the Intelligence panels, the vice president, the CIA director and the secretaries of state and defense.

In the Iran case, copies of Reagan's crucial January 1986 finding were apparently not given or shown to key administration officials, including Secretary of State George P. Shultz and Secretary of Defense Caspar W. Weinberger, according to the Tower commission.

Both Shultz and Weinberger, who opposed selling arms to Iran, told the Tower panel they did not see the secret finding until after the operation became public months later.

Wright described the pending House bill as "vitally necessary" because of ambiguities in the current law that he said had been exploited by the administration in the Iran case.

He told the House Intelligence Subcommittee on Legislation during an April 1 hearing that Congress intended the phrase "timely fashion" to mean no more than a couple of days.

Hampering the President?

But critics of HR 1013 believe that Congress should not place such a rigid notification requirement on the president. House Minority Leader Robert H. Michel, R-Ill., told the subcommittee that the pending measure is the "functional equivalent of a foreign policy straitjacket" that could hamper the president's ability to carry out his responsibilities.

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Panel Loses Round on Bank Records

A federal judge in Washington April 16 threw a major hurdle in the path of congressional investigators seeking to unravel the complex financial network in the Iran-contra affair.

Chief U.S. District Court Judge Aubrey E. Robinson Jr. denied a request by the Senate's select Iran-contra committee that he order retired Air Force Maj. Gen. Richard V. Secord to authorize an inspection of records of foreign bank accounts he controls. Committee investigators suspect that Secord and others used the secret accounts in Switzerland and the Cayman Islands to handle money involved in the sale of U.S. arms to Iran and the alleged diversion of profits from those sales to the Nicaraguan contras.

Secord has refused to allow access to those accounts, saying that doing so would violate his Fifth Amendment rights against self-incrimination. The Senate committee had responded by asking Robinson to force Secord to sign a "consent directive" authorizing the foreign banks to release the records.

Denying the request, Robinson said such an order would be "violative of Secord's Fifth Amendment" rights. If required to sign the directive, Robinson said, Secord "would be testifying just as clearly as if he were forced to verbally assert" the same information.

A spokesman said the Senate panel will appeal the ruling and seek expedited consideration. As a result of the ruling, the Senate panel and its House counterpart may rely more heavily on the testimony of Secord's business associate, Albert Hakim, who has been eligible to testify as of April 10. But, as of April 17, the panels were still gathering information to prepare for his testimony. After April 21, the committees will be free to vote immunity for Adm. John M. Poindexter, another key Iran-contra figure.

Michel, however, acknowledged that Reagan had waited too long before telling members of Congress about his decision to sell arms secretly to Iran. "I am personally offended that I was left out of the loop for so long," he said.

Former CIA officials also have questioned whether Reagan, in not notifying Congress about the Iran arms sales, had lived up to the law. His lengthy concealment of the operation was "obviously a violation of the concept of the law," said former CIA Director William E. Colby, who headed the agency from 1973 to 1976.

But Colby and other former CIA officials do not support the effort to write a specific deadline into law for telling Congress about covert actions.

"Time is not measured by a clock. Time is measured by the risk" of specific operations, said retired Adm. Stansfield Turner, CIA director during the Carter administration. Even a delay of several months would not be unreasonable or illegal if the president had reason to believe that earlier disclosure to Congress would jeopardize a covert operation, Turner told the House subcommittee.

CIA Actions in Iran

Turner, who ran the CIA during the American hostage crisis in Iran that preoccupied President Carter

during his final 14 months in office, said he did not tell Congress about three highly secretive operations related to the hostages.

Two of them involved clandestine missions by CIA agents into Iran to plan for a military rescue attempt — which failed — in April 1980. The other incident involved sending a CIA agent to Tehran in 1980 to assist in the successful escape of six Americans who were hiding in the Canadian Embassy.

Turner said it would be inappropriate to require prior or immediate after-the-fact notice of such operations involving potential danger to the lives of the agents involved. "It would be especially difficult to tell people of this type that you are informing others purely for the sake of checking on whether you yourself are doing the right thing or not," said Turner.

Confronted with such arguments, the sponsors of the House bill say they might make some changes before moving ahead with the legislation. Matthew F. McHugh, D-N.Y., who chairs the Intelligence subcommittee, said the panel might reconsider the 48-hour notice period in the current bill.

But McHugh also said that a fixed deadline is at the heart of the legislation and that some version of it is certain to remain in the bill.

The House panel probably will

act on HR 1013 sometime this spring. The administration will present its views when McHugh schedules another hearing following Congress' return from its April 11-20 recess.

Webster's Pledge

Members of the Senate Intelligence Committee grilled William H. Webster, Reagan's nominee for CIA director, on the notification issue during his confirmation hearings April 8-9. (*Weekly Report* p. 662)

Webster, currently the FBI director, promised that he would notify Congress of covert activities "in the timeliest way possible." Webster made it clear that he meant a period of several days or fewer.

Given that pledge, key senators are reluctant to press for legislation similar to the House proposal.

"There is sentiment for a 48-hour time frame, but I prefer not to legislate it," said William S. Cohen, R-Maine, vice chairman of the Senate Intelligence Committee. "I can't speak for others, but I think [Webster's promise] is enough, at least on the Senate side."

David L. Boren, D-Okla., who chairs the Senate panel, has said on several occasions that he does not think legislation is needed to ensure notification of covert actions. Instead, he thinks improved trust and cooperation between the executive and legislative branches are the key.

But promises of cooperation are not enough for some members of Congress. Daniel Patrick Moynihan, D-N.Y., is still angry over what he said was the administration's failure to live up to a 1984 agreement on covert activities reached by Casey and the Senate Intelligence Committee.

The accord grew out of an incident in which Casey was accused of not telling the committee about the CIA's involvement in the 1983-84 mining of Nicaraguan harbors as part of its clandestine efforts to aid the contras.

Casey promised to inform the committee about future operations and to review the agreement at a later date. But that review, which concluded that the earlier agreement was working well, came in June 1986, five months after Reagan's secret finding on arms sales to Iran.

Moynihan, who left the Intelligence Committee in January 1985, says new legislation is needed. He has endorsed the House bill although he has called for more flexibility in the 48-hour notification requirement. ■